



## FROM THE COMMITTEE ON MODEL CRIMINAL JURY INSTRUCTIONS

=====

The Committee solicits comment on the following proposal by January 1, 2017. Comments may be sent in writing to Samuel R. Smith, Reporter, Committee on Model Criminal Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to [MCrimJI@courts.mi.gov](mailto:MCrimJI@courts.mi.gov).

=====

### PROPOSED

The Committee proposes an amendment to M Crim JI 12.1b, the manufacturing controlled substances violations of MCL 333.7401c. The amendment is intended to clear up possible confusion that methamphetamine must have actually been produced using the chemical or laboratory equipment. Deletions are in strike-through; new language is underlined.

#### **[AMENDED] M Crim JI 12.1b Owning or Possessing Chemicals or Laboratory Equipment for Manufacturing Controlled Substances**

(1) The defendant is charged with the crime of owning or possessing [chemicals / laboratory equipment] for use in manufacturing [*identify controlled substance*]. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant [owned / possessed] [a chemical / laboratory equipment<sup>1</sup>].

[Select (3) where methamphetamine is the controlled substance. Select (4) where some other controlled substance is involved.]

(3) Second, that the defendant knew or had reason to know that the [chemical / laboratory equipment] was going to be used to manufacture<sup>2</sup> methamphetamine.<sup>3</sup>

or

~~(3)~~ (4) Second, that the defendant knew or had reason to know that the [chemical / laboratory equipment] was going to be used to manufacture [*identify controlled substance*].<sup>2</sup>

[Select that which has been charged:]<sup>4</sup>

~~(4)~~ (a) Third, that a person less than 18 years old was present at the time.<sup>5</sup>

~~(5)~~ (b) Third, that hazardous waste<sup>6</sup> was [generated / treated / stored / disposed].<sup>7</sup>

~~(6)-(c)~~ Third, that the violation occurred within 500 feet of [a residence / a business / a church<sup>8</sup> / school property<sup>9</sup>].<sup>10</sup>

~~(7)~~ (d) Third, that the alleged violation involved the [possession / placement / use] of a [firearm / device designed or intended to injure a person].<sup>11</sup>

~~(8) — Third, that the controlled substance was methamphetamine.~~<sup>11</sup>

#### *Use Note*

<sup>1</sup> “Laboratory equipment” is defined in MCL 333.7401c(7)(b).

<sup>2</sup> The jury may be instructed on the definition of “manufacture,” which may be found in MCL 333.7401c(7)(c).

<sup>3</sup> MCL 333.7401c(2)(f).

<sup>4</sup> Knowingly owning or possessing the described chemicals or equipment is a 10-year offense. MCL 333.7401c(2)(a). Various aggravating factors increase the maximum term of imprisonment. *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), requires that factors that increase a maximum sentence be charged and proved beyond a reasonable doubt. If there are multiple aggravating factors, they will be charged in separate counts. Where applicable, provide the appropriate instruction for the charged offense in each count.

<sup>5</sup> MCL 333.7401c(2)(b).

<sup>6</sup> If appropriate, the jury should be instructed on the definition of “hazardous waste,” as provided in MCL 333.7401c(7)(a), which incorporates the definition found in MCL 324.11103.

<sup>7</sup> MCL 333.7401c(2)(c).

<sup>8</sup> The statute references “or other house of worship” in MCL 333.7401c(2)(d); appropriate terminology may be substituted.

<sup>9</sup> MCL 333.7401c(7)(f) incorporates MCL 333.7410 for the definition of “school property.”

<sup>10</sup> MCL 333.7401c(2)(d).

<sup>11</sup> MCL 333.7401c(2)(e).